Bursa Malaysia Securities Bhd v Tengku Dato' Kamal Ibni Sultan Sir Abu Bakar & Ors

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO D-24NCC-168 OF 2010
ABU BAKAR JAIS J
9 NOVEMBER 2016

Civil Procedure — Action — Committal proceedings — Defendants failed to comply with courts' orders — Whether defendants could challenge main case — Whether order of committal should be allowed — Whether sentence imposed appropriate — Whether defendant could appeal against order of committal — Whether defendant could appeal against sentence — Rules of Court 2012 O 45 r 5(1) — Rules of the Court of Appeal 1994 r 12

The present application for order of committal arose from the failure of the first, second and fourth defendants to obey the order of the High Court which was affirmed by the Court of Appeal for payment of certain sum to the plaintiff. In opposing the application, the defendant sought to question the substantive suit itself that had resulted in the two courts' orders.

Held:

(1) It was too late in the day for the said defendants to challenge the main case. It was not the duty of the present court to consider the merits of the defence of the said defendants in the main case that had already been decided by the High Court and Court of Appeal earlier. The orders of the High Court and Court of Appeal ('the said orders') were final in nature requiring the said defendants to follow and comply with the same. Since there was no dispute that the said defendant had not complied with the said orders, the court issued an order of committal against the said defendants pursuant to O 45 r 5(1) of the Rules of Court 2012 (see paras 13 & 18–19).

(2) The court sentenced the first and second defendants to a fine of RM2m each to be paid within 90 days from the date of sentencing and in default 30 days imprisonment. The fourth defendant was sentenced to a fine of RM100,000 to be paid within 90 days from the date of sentencing and in default 14 days imprisonment (see paras 20–21).

(3) The order for committal was given on 24 March 2016 whereas the sentence for the committal was pronounced on 1 July 2016. Pursuant to r 12 of the Rules of the Court of Appeal 1994, the said defendants have only one month from the order of committal to appeal to the Court of

Appeal. Since the said defendants had only filed their appeal on 26 July 2016, it was clear that they were out of time for about four months to appeal against the order of committal. They could only proceed with the appeal against sentence imposed by the present court. The court held that the sentence imposed against the said defendants was fair, reasonable and commensurate with the non-compliance of the two courts' orders (see paras 22 & 25).

[Bahasa Malaysia summary

Permohonan ini untuk perintah komital berbangkit daripada kegagalan defendan pertama, kedua dan keempat untuk mematuhi perintah Mahkamah Tinggi yang mana telah disahkan oleh Mahkamah Rayuan bagi bayaran jumlah tertentu kepada plaintif. Dalam membantah permohonan tersebut, defendan memohon untuk menyoal tindakan substantif itu sendiri yang menyebabkan kedua-dua perintah mahkamah.

Diputuskan:

(1) Adalah terlalu lewat bagi defendan-defendan untuk mencabar kes utama. Ia bukan tugas mahkamah ini untuk mempertimbangkan merit pembelaan defendan-defendan dalam kes utama yang telah diputuskan terdahulu oleh Mahkamah Tinggi dan Mahkamah Rayuan. Perintah-perintah Mahkamah Tinggi dan Mahkamah Rayuan ('perintah-perintah tersebut') adalah bersifat muktamad memerlukan defendan-defendan untuk mengikut dan mematuhi kepadanya. Memandangkan tidak terdapat pertikaian bahawa defendan tidak mematuhi dengan perintah-perintah tersebut, mahkamah mengeluarkan perintah komital terhadap defendan-defendan tersebut berikutan A 45 k 5(1) Kaedah-Kaedah Mahkamah 2012 (lihat perenggan 13 & 18–19).

(2) Mahkamah menjatuhkan hukuman ke atas defendan pertama dan kedua denda setiap seorang RM2 juta dikehendaki membayar dalam masa 90 hari dari tarikh penghukuman dan jika ingkar penjara 30 hari. Defendan keempat dijatuhkan hukuman sebanyak RM100,000 dikehendaki membayar dalam masa 90 hari dari tarikh penghukuman dan jika ingkar penjara 14 hari (lihat perenggan 20-21).

(3) Perintah untuk komital diberikan pada 24 Mac 2016 sementara hukuman bagi komital telah diumumkan pada 1 Julai 2016. Berikutan kepada k 12 Kaedah-Kaedah Mahkamah Rayuan 1994, defendan-defendan tersebut hanya mempunyai satu bulan dari perintah komital untuk merayu kepada Mahkamah Rayuan. Memandangkan defendan-defendan tersebut hanya memfailkan rayuan mereka pada 26 Julai 2016, ia adalah jelas bahawa mereka adalah di luar masa lebih kurang empat bulan untuk merayu terhadap perintah komital tersebut. Mereka hanya boleh meneruskan dengan rayuan terhadap hukuman

yang dikenakan oleh mahkamah ini. Mahkamah ini memutuskan bahawa hukuman yang dikenakan terhadap defendan-defendan tersebut adalah adil, munasabah dan setara dengan ketidakpatuhan kepada kedua-dua perintah mahkamah (lihat perenggan 22 & 25).]

Notes

For a case on committal proceedings, see 2(1) *Mallal's Digest* (5th Ed, 2015) para 114.

Cases referred to

Jasa Keramat Sdn Bhd v Monatech (M) Sdn Bhd [2001] 4 MLJ 577; [2001] 4 CLJ 549, CA (refd)
Monatech (M) Sdn Bhd v Jasa Keramat Sdn Bhd [2002] 4 MLJ 241, FC (refd)
Wee Choo Keong v MBF Holdings & Anor and another appeal [1993] 2 MLJ 217, SC (refd)

Legislation referred to

Rules of Court 2012 O 45 r 5(1)
Rules of the Court of Appeal 1994 r 12

Lee Shih (Nimalan Devaraja with him) (Skrine) for the plaintiff.
Jasbeer Singh Benta Singh (Jasbeer, Nur & Lee) for the defendants.

Abu Bakar Jais J:

INTRODUCTION

[1] This is the application of the plaintiff for an order of committal against the first, second and fourth defendants pursuant to leave given earlier by this court. The present order is requested as all three defendants had disobeyed an earlier order given by the High Court in favour of the plaintiff and affirmed largely by the Court of Appeal, except to extent the time of payment of certain sum ordered by the said High Court.

BACKGROUND FACTS

[2] The relevant part of the High Court's order is as follows:

(1) bahawa Defendan Pertama hendaklah membayar kepada Plaintif jumlah sebanayak RM1,000,000.00 (Ringgit Malaysia Satu Juta) di dalam tempoh tiga puluh (30) hari dari tarikh Perintah ini;

(2) bahawa Defendan Ke-2 hendaklah membayar kepada Plaintif jumlah sebanyak RM1,000,000.00 (Ringgit Malaysia Satu Juta) di dalam tempoh tiga puluh (30) hari dari tarikh Perintah ini;

(3) bahawa Defendan Ke-3 hendaklah membayar kepada Plaintif jumlah sebanyak RM500,000.00 (Ringgit Malaysia Lima Ratus Ribu) di dalam tempoh tiga puluh (30) hari dari tarikh Perintah ini;

(4) bahawa Defendan Ke-4 hendaklah membayar kepada Plaintif jumlah sebanyak RM500,000.00 (Ringgit Malaysia Lima Ratus Ribu) di dalam tempoh tiga puluh (30) hari dari tarikh Perintah ini;

(5) bahawa di dalam tempoh tiga puluh (30) hari dari tarikh Perintah ini, Defendan Pertama dan Ke-2, bersesama dan berasingan, memulangkan balik kepada Cepatwawasan Group Berhad RM13,000,000.00 yang dibayar kepada Opti Temasek Sdn Bhd;

(6) bahawa di dalam tempoh tiga puluh (30) hari dari tarikh Perintah ini, Defendan-Defendan, bersesama dan berasingan, memulangkan balik kepada Cepatwawasan Group Berhad RM3,000,000.00 yang dibayar kepada Sheikh Abdul Rahim bin Sheikh Hassan;

(7) bahawa Plaintif diberi kebebasan untuk memohon untuk arahan-arahan daripada Mahkamah Yang Mulia ini untuk penyampaian Perintah ke atas Defendan-Defendan dan untuk apa-apa perlanjutan masa untuk penyampaian itu;

(8) bahawa Defendan-Defendan hendaklah membayar kepada Plaintif kos sebanyak RM20,000.00 (Ringgit Malaysia Dua Puluh ribu).

[3] The material part of the Court of Appeal's order affirming the High Court's order is as follows:

(a) Rayuan ditolak dengan kos sebanyak RM20,000.00 (Ringgit Malaysia Dua Puluh Ribu Sahaja) dibayar oleh Perayu-Perayu kepada Responden;

(b) Perintah Mahkamah Tinggi bertarikh 28-12-2010 diubah untuk memperuntukkan bahawa kesemua pembayaran dan tindakan yang dinyatakan dalam perintah itu akan dibuat dalam tempoh tiga puluh (30) hari dari tarikh perintah ini; dan

(c) Deposit dibayar kepada Responden ke akaun kos yang telah ditetapkan.

THE PLAINTIFF'S SUBMISSION

[4] In brief the plaintiff submits that since the said defendants had failed to honour both judgments by the High Court and Court of Appeal, the order of committal ought to be granted against the former.

[5] There is no dispute the said defendants are fully aware of these two courts' orders and there is no dispute that the defendants were served with the relevant cause papers for the committal proceeding.

THE DEFENDANTS' SUBMISSION

[6] The said defendants' contention can be summarised as follows.

[7] The committal proceeding now is improper as there are orders that were made earlier and unknown to the said defendants affecting the case itself upon which the orders of the High Court and Court of Appeal were made.

[8] There is a consent judgment which were recorded by the relevant parties including the said defendants that had settled the two orders of the High Court and Court of Appeal.

[9] Committal proceeding was also wrongly undertaken by the plaintiff without full disclosure to this court regarding the consent judgment already recorded.

[10] The contention of the plaintiff regarding the suit itself that resulted in the two courts' orders are highly disputed.

[11] The plaintiff has no jurisdiction to take action in the first place that has resulted in the two courts' orders.

[12] The action of the plaintiff is sub judice and prejudicial to the said defendants as the company itself, where the defendants were ordered to make payments to by the two courts' orders, had undertaken and initiated the suit against the defendants.

COURT'S FINDINGS

The law

[13] Since there is no dispute that the two orders from the High Court and Court of Appeal have not been complied and obeyed by the said defendants, I am now exercising my power to issue an order of committal against the said defendants pursuant to O 45 r 5(1) of the Rules of Court 2012 ('the ROC') that states:

> Where a person required by a judgment or order to do an act within a time in the judgment or order refuses or neglects to it within that time then, subject to these Rules, the judgment or order may be enforced by one or more of the following means:
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> (A) with the leave of the Court, an order for committal.

[14] Further in *Wee Choo Keong v MBF Holdings & Anor and another*

appeal [1993] 2 MLJ 217 it is said:

> It is established law that a person against whom an order of court has been issued is duty bound to obey that order until it is set aside. It is not open for him to decide for himself whether the order was wrongly issued and therefore does not require obedience. His duty is one of obedience until such time as the order may be set aside or varied. Any person who fails to obey an order of court runs the risk of being held in contempt with all its attendant consequences.

[15] While in the Court of Appeal's case of *Jasa Keramat Sdn Bhd v Monatech (M) Sdn Bhd* [2001] 4 MLJ 577; [2001] 4 CLJ 549 it is said:

> It is true that courts should be slow to punish a person for contempt. But that does not mean that the courts should sit with folded arms, engrossed with legal theories whilst parties in the proceedings are removing the subject matter of the claim to defeat the making of the order that the court would and might make and to reduce the order, if and when made, to no more than a paper judgment, as had happened in this case. Interest of individuals is to be respected, yes, but not that of dishonest individuals. And, when the interest of justice and of the public come face to face with the interest of individuals, the former must prevail. Otherwise, the public will lose confidence in the courts. If the courts and the administration of justice are to be respected, the courts must ensure that their judgments are effective. Judgments are not mere literary works. No matter how learned they are and how well they are written, if they cannot deliver the goods, they are of no use. Taking all the circumstances of this case, it is very clear to us that the acts complained of are a blatant interference with the due administration of justice or the course of justice that the perpetrators should be punished with contempt of the court.

[16] The Court of Appeal's judgment was upheld by the Federal Court in *Monatech (M) Sdn Bhd v Jasa Keramat Sdn Bhd* [2002] 4 MLJ 241, where it is said:

> Following the principle, *Oswald's Contempt of Court* (3rd Ed) provides a good guide to a general definition of contempt of court, thus:
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> > To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties, litigants or their witnesses during litigation.
>
> What therefore is contempt of court, 'is interference with the due administration of justice' — per Nicholls LJ at p 923 of *Attorney-General v Hislop & Anor* [1991] 1 All ER 911 (CA).
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> In view of the generality of the phrase 'interference with the due administration of justice', we are of the view that the categories of contempt are never closed. To that extent we respectfully endorse the statement made by Low Hop Bing J, in *Chandra Sri Ram v Murray Hiebert* [1997] 3 MLJ 240 at p 270:
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> > The circumstances and categories of facts which may arise and which may

A constitute contempt of court, in a particular case, are never closed. This is the same position as in the case of negligence in which the scope for development is limitless. Contempt of court may arise from any act or form whatsoever, ranging from libel or slander emanating from any contemptuous utterance, news item, report or article, to an act of disobedience to a court order or a failure to comply with a procedural requirement established by law. Any of these acts, in varying degrees, affects the administration of justice or may impede the fair trial of sub judice matters, civil or criminal, for the time being pending in any court. The particular matrix of the individual case is of paramount importance in determining whether a particular circumstance attracts the application of the law of contempt. Hence, a positive perception of the facts is a prerequisite in deciding whether or not there is any contravention necessitating the invocation of the law of contempt.

The defendants' arguments

[17] I find that there are no merits in the contention of the said defendants resisting the order for committal for the following reasons.

[18] First it is clear the arguments of the said defendants as narrated earlier sought to question the substantive suit itself that has resulted in the two courts' orders. It is too late in the day now for the said defendants to challenge the main case. The merits of the defence of the said defendants in the substantive case itself should have been raised before the orders were pronounced by the High Court and Court of Appeal respectively. With the issuance of the two courts' orders, it is apparent the said defendants had lost the main suit initiated by the plaintiff against them.

[19] It is not the duty of this court now to consider the merits of the defence of the said defendants in the main case. That had already been decided by the High Court and Court of Appeal earlier. This court is only concerned whether the said defendants had obeyed the two courts' orders arising from the substantive suit itself. And these orders are final in nature requiring the said defendants to follow and comply with the same.

The sentence

[20] Having decided that the order of committal ought to be given against the said defendants, I had sentenced the said defendants as follows:

(a) a fine of RM2m on the first defendant to be paid within 90 days from the date of sentencing and in default 30 days imprisonment;

(b) a similar fine also on the second defendant to be paid within 90 days from the date of sentencing and in default 30 days imprisonment; and

(c) a fine of RM100,000 on the fourth defendant to be paid within 90 days from the date of sentencing and in default 14 days imprisonment.

[21] I find that these sentences are appropriate and reasonable having regard to the fact that the said defendants had refused to obey the two courts' orders. These sentences also took into account the huge sums imposed to be paid by the said defendants as narrated earlier in the High Court's order and affirmed by the Court of Appeal's order.

The defendants are late in appealing

[22] The order for committal was given by this court on 24 March 2016. After that the case was adjourned to another date for submission on sentencing. Thereafter the sentence for the committal against the said defendants was pronounced by this court on 1 July 2016 after submission on sentencing. The said defendants only lodged the appeal to Court of Appeal to challenge this court's decision on 26 July 2016. It is clear under r 12 of the Rules of the Court of Appeal 1994, the said defendants have only one month from the order of committal, which as stated, was given by this court on 24 March 2016 to appeal to the Court of Appeal. Since they only filed their appeal on 26 July 2016, it is clear they are out of time for about four months to appeal against the order of committal. They can only proceed with the appeal at the Court of Appeal against the sentence imposed by this court. They cannot wait until 26 July 2016 to file the notice of appeal as there are two different decisions in respect of this committal case, one for the finding of committal itself and the other for decision on sentence. They should have filed two separate notices of appeal, one for the order of committal and the other against the sentence pronounced.

CONCLUSION

[23] The plaintiff had proven its case for the order of committal. There are as clearly seen two courts' orders from the High Court and Court of Appeal which were not obeyed by the said defendants. No reasons were given why these orders were not complied by the said defendants. In fact there is no dispute these orders were not obeyed.

[24] The arguments of the said defendants objecting to the committal order only raised issues affecting the main suit itself upon which the two courts were given. The substantive suit has already been decided by the issuance of the two courts' orders. Therefore it is clearly too late and irrelevant for the said defendants to bring these issues only now since the two orders had been issued after full trial and after appeal.

[25] The sentence imposed and meted out by this court against the said defendants is fair, reasonable and commensurate with the non-compliance of the two courts' orders.

[26] The said defendants also cannot proceed at the Court of Appeal with the appeal against the order of committal given by this court because they are late in filing their appeal. They can only proceed with the appeal in respect of the sentence imposed by this court.

[27] For all the reasons elaborated as aforesaid, the order of committal and sentence is given by this court accordingly.

Order accordingly.

Reported by Dzulqarnain Ab Fatar